



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
Federal Office Building  
212 Third Avenue South, Suite 200  
Minneapolis, MN 55401-2657

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (612)348-1757  
Fax: (612)348-1785

February 10, 2022

Nathaniel R. Boulton, Attorney  
Hedberg & Boulton, PC  
100 Court Avenue, Suite 425  
Des Moines, IA 50309

Re: UFCW Local 1149 (JBS Swift)  
Case 18-CB-288021

Dear Mr. Boulton:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL  
Regional Director

cc: Roger Kail, President

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

JBS Swift  
402 N 10th Ave.  
Marshalltown, IA 50158



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February 17, 2022

(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C)

Re: UFCW Local 1149  
(JBS Swift)  
Case 18-CB-288021

Dear (b) (6), (b) (7)(C)

By this letter I am revoking the withdrawal letter issued on February 10, 2022. As explained below, Case 18-CB-288021 is dismissed.

We have carefully investigated and considered your charge that UFCW Local 1149 has violated the National Labor Relations Act.

**Decision to Dismiss:** Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge in the above-captioned case alleges that the Union violated the Act by refusing to process your grievance following your two terminations, which you assert were related to a workers' compensation claim. Your charge further alleges that the Union unfairly allowed you to be reinstated under a last chance agreement.

The evidence demonstrated that the Union successfully grieved your first termination and secured a last chance agreement. It further demonstrated the Union attempted to grieve your second termination, but, due to the limiting language in the last chance agreement, the merits of your second discharge were not subject to the grievance procedure. In addition, the evidence demonstrated the Union communicated with you throughout the process and provided you with guidance as to the bases for its decisions.

Unions are afforded a wide range of reasonableness with respect to their duty to represent employees and with respect to processing and arbitrating grievances. See *Airline Pilots Assoc., Int'l v. O'Neill*, 499 U.S. 65, 78, 111 S.Ct. 1127, 1136 (1991). To find that a union did not fairly represent employees, it must be shown that the union acted arbitrarily, discriminatorily, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). The evidence here did not establish that the Union acted arbitrarily, discriminatorily, or in bad faith with respect to its refusal to file a grievance on your behalf. Rather, the evidence demonstrated that the Union made a reasonable determination

that it would not be successful if it attempted to continue processing the grievance over your final discharge.

The remaining allegations in your charge appear to be statements of fact and arguments in support of your allegations; they are not themselves allegations of wrongdoing by the Union.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

**Means of Filing:** You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible. Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at [www.nlrb.gov](http://www.nlrb.gov). See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at [www.nlrb.gov](http://www.nlrb.gov). If you require additional assistance with E-Filing, please contact [e-Filing@nlrb.gov](mailto:e-Filing@nlrb.gov).

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

**Appeal Due Date:** The appeal is due on **March 3, 2022**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than March 2, 2022. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 3, 2022**. The request may be filed electronically through the **E-File Documents** link on our website [www.nlrb.gov](http://www.nlrb.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after March 3, 2022, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

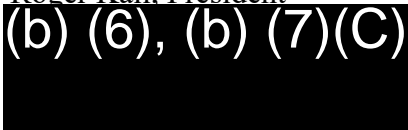
Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL  
Regional Director

Enclosure

cc: Roger Kail, President

(b) (6), (b) (7)(C)  


Nathaniel R. Boulton, Attorney  
Hedberg & Boulton, PC  
100 Court Avenue, Suite 425  
Des Moines, IA 50309

JBS Swift  
402 N 10th Ave.  
Marshalltown, IA 50158



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

March 3, 2022

(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C)

Re: UFCW Local 1149 (JBS Swift)  
Case 18-CB-288021

Dear (b) (6), (b) (7)(C)

We have received your timely appeal from the Region's decision in the above-captioned case. We will assign your appeal for processing in accordance with Agency procedures. Please be assured that our review of this matter will include a full analysis of the underlying investigatory file, your appeal, as well as current Board law and processes.

We will notify you and all involved parties of our decision by letter via email as permitted under Section 102.4(c) of the Board's *Rules and Regulations*. If an email address is not available for you, we will provide the decision by mail.

Sincerely,

Jennifer A. Abruzzo  
General Counsel

A handwritten signature in black ink that reads "Mark E. Arbesfeld". The signature is written in a cursive, flowing style.

By: \_\_\_\_\_

Mark E. Arbesfeld, Director  
Office of Appeals

cc: JENNIFER A. HADSAL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
FEDERAL OFFICE BUILDING  
212 3<sup>RD</sup> AVE S STE 200  
MINNEAPOLIS, MN 55401-2657

ROGER KAIL, PRESIDENT

(b) (6), (b) (7)(C)

NATHANIEL R. BOULTON, ESQ.  
HEDBERG & BOULTON, PC  
100 COURT AVE STE 425  
DES MOINES, IA 50309

JBS SWIFT  
402 N 10<sup>TH</sup> AVE  
MARSHALLTOWN, IA 50158

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UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

March 9, 2022

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Re: UFCW Local 1149 (JBS Swift)  
Case 18-CB-288021

Dear (b) (6), (b) (7)(C)

By letter dated March 3, 2022, your appeal in the above matter was acknowledged. Your request for an extension of time to file additional information in support of your appeal is hereby granted to March 23, 2022.

As fully set forth in the Region's dismissal letter, the additional information in support of your appeal may be filed electronically by using the E-filing system on the Agency's website [www.nlrb.gov](http://www.nlrb.gov). If you are unable to e-file you may mail the information to the National Labor Relations Board, Office of Appeals, 1015 Half St, SE, Washington D.C 20570. Please include your case number on any correspondence.

Sincerely,

Jennifer A. Abruzzo  
General Counsel

A handwritten signature in black ink that reads "Mark E. Arbesfeld".

By:

\_\_\_\_\_  
Mark E. Arbesfeld, Director  
Office of Appeals

cc: JENNIFER A. HADSALL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
FEDERAL OFFICE BUILDING  
212 3<sup>RD</sup> AVE S STE 200  
MINNEAPOLIS, MN 55401-2657

JBS SWIFT  
402 N 10<sup>TH</sup> AVE  
MARSHALLTOWN, IA 50158

NATHANIEL R. BOULTON, ESQ.  
HEDBERG & BOULTON, PC  
100 COURT AVE STE 425  
DES MOINES, IA 50309

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UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

April 18, 2022

(b) (6) (b) (7)(C)  
(b) (6), (b) (7)(C)

Re: UFCW Local 1149 (JBS Swift)  
Case 18-CB-288021

Dear (b) (6), (b) (7)(C)

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of February 17, 2022.

You alleged that the Union violated Section 8(b)(1)(A) of the Act by failing to fairly represent you regarding the processing of your grievance(s) against the Employer. The evidence, however, was insufficient to establish a violation. While a union owes employees a duty of fair representation about disputes arising with an employer, a union is also afforded a wide range of reasonableness in carrying out this duty and a breach occurs only when the union's conduct is based upon arbitrary, irrelevant or discriminatory considerations. See *Vaca v. Sipes*, 386 U.S. 171 (1967); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953).

Here, the investigation did not establish that the Union handled your grievances in an unlawful manner. Rather, the evidence indicated that the Union processed your first grievance and brought you back to work under a last chance agreement. Subsequently, you violated the terms of that agreement and the Employer terminated you again. The Union filed another grievance which the Employer denied. Based on its assessment of the merits of the grievance, the Union reasonably determined that it was unlikely to prevail on the grievance. In these circumstances, the evidence fails to establish that the Union's assessment/processing of your grievances was based upon any unlawful considerations.

Accordingly, your appeal is denied.

Sincerely,

Jennifer A. Abruzzo  
General Counsel



By:

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Mark E. Arbesfeld, Director  
Office of Appeals

cc: JENNIFER A. HADSALL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
FEDERAL OFFICE BUILDING  
212 THIRD AVE S STE 200  
MINNEAPOLIS, MN 55401-2657

NATHANIEL R. BOULTON, ESQ.  
HEDBERG & BOULTON, PC  
100 COURT AVE STE 425  
DES MOINES, IA 50309

JBS SWIFT  
402 N 10TH AVE.  
MARSHALLTOWN, IA 50158

ROGER KAIL, PRESIDENT

(b) (6), (b) (7)(C)

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